



This document is scheduled to be published in the Federal Register on 09/18/2015 and available online at <http://federalregister.gov/a/2015-23359>, and on FDsys.gov

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2015-0375; FRL-9933-02]

Fluensulfone; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of fluensulfone in or on tomato, paste. Makhteshim Agan of North America, Inc., doing business as ADAMA requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective [*insert date of publication in the Federal Register*].

Objections and requests for hearings must be received on or before [*insert date 60 days after date of publication in the Federal Register*], and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2015-0375, is available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave., NW., Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPP Docket is (703) 305-5805. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Susan Lewis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; main telephone number: (703) 305-7090; email address: RDNRNotices@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).

- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How Can I Get Electronic Access to Other Related Information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.

C. How Can I File an Objection or Hearing Request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2015-0375 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before *[insert date 60 days after date of publication in the **Federal Register**]*. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA-HQ-OPP-2015-0375, by one of the following methods:

- *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

- *Mail*: OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Hand Delivery*: To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of July 17, 2015 (80 FR 42462) (FRL- 9929-13), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 5F8365) by Makhteshim Agan of North America, Inc., doing business as ADAMA, 3120 Highwoods Blvd., Suite 100, Raleigh, NC 27604. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the insecticide fluensulfone, 3,4,4-trifluoro-but-3-ene-1-sulfonic acid, in or on tomato, paste at 1.0 parts per million (ppm). That document referenced a summary of the petition prepared by ADAMA, the registrant, which is available in the docket, <http://www.regulations.gov>. There were no comments received in response to the notice of filing.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is “safe.”

Section 408(b)(2)(A)(ii) of FFDCA defines “safe” to mean that “there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.” This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to “ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....”

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with FFDCA section 408(b)(2).

In the **Federal Register** of September 24, 2014 (79 FR 56963) (FRL-9914-35), EPA established tolerances for residues of fluensulfone in or on cucurbit vegetable crop group 9 and fruiting vegetable crop group 8-10 at 0.50 parts per million (ppm). The information available to the Agency in support of the September 24, 2014 final rule showed no concentration of fluensulfone or the metabolite BSA in or on fruiting vegetable commodities and that separate tolerances for residues in or on processed tomato products were unnecessary. Therefore, EPA established a tolerance for residues of fluensulfone in or on fruiting vegetable crop group 8-10 at 0.50 ppm and determined that a separate tolerance for tomato, paste was not necessary.

Since the time of the September 24, 2014 final rule, EPA received a new tomato processing study that demonstrates a concentration of BSA residues in tomato paste (3.5X). Based on this concentration factor and the highest average field trial (HAFT) residues in tomato

(0.29 ppm), the Agency determined that the fruiting vegetable crop group 8-10 tolerance at 0.5 ppm is insufficient to cover residues in tomato, paste and therefore a tolerance of 1.0 ppm in or on tomato, paste is necessary to cover residues of BSA.

The Agency assessed the use of fluensulfone in or on tomato, paste at the tolerance of 1.0 ppm and determined that there would be no resulting change in the risk estimates from the previous risk assessment for the chemical. Since the publication of the September 24, 2014 final rule, the toxicity profile of fluensulfone has not changed, and the risk assessments that supported the establishment of those tolerances published in the Federal Register remain valid. The dietary risk assessments for fluensulfone are based on residues of the parent compound only. Since residues of the parent did not concentrate in tomato paste, a new risk assessment is not necessary. Therefore, EPA relies upon those supporting risk assessments and the findings made in the September 24, 2014 Federal Register document, as well as the review of the additional tomato processing data in support of this rule. EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to fluensulfone residues.

For a detailed discussion of the aggregate risk assessments and determination of safety for the proposed tolerances, please refer to the September 24, 2014 Federal Register document and its supporting documents, available at <http://www.regulations.gov> in docket ID number EPA-HQ-OPP-2012-0593. Further information about EPA's determination that a separate tolerance should be established in or on tomato, paste may be found in the document, "Fluensulfone – Revised Tolerance Recommendation for Tomato Paste." in docket ID number EPA-HQ-OPP-2015-0375.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology, a reverse-phase high performance liquid chromatography with dual mass spectrometry/mass spectrometry (HPLC-MS/MS), is available to enforce the tolerance expression.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755-5350; telephone number: (410) 305-2905; email address: *residuemethods@epa.gov*.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for fluensulfone.

V. Conclusion

Therefore, tolerances are established for residues of fluensulfone, 3,4,4-trifluoro-but-3-ene-1-sulfonic acid, in or on tomato, paste at 1.0 ppm.

VI. Statutory and Executive Order Reviews

This action establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled “Regulatory Planning and Review” (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among

the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 4, 2015.

Susan Lewis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180--[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

2. In § 180.680, add alphabetically the following commodity to the table in paragraph (a) to read as follows:

§ 180.680 Fluensulfone; tolerances for residues.

(a) * * *

Commodity	Parts per million
Tomato, paste	1.0
* * * * *	

* * * *